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MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JAN 19 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

DORITHY C.,)	2 CA-JV 2011-0082
)	DEPARTMENT A
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY, VORJOLO C., RUTH C., and)	
SOLOMON C.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J18708400

Honorable Karen S. Adam, Judge

AFFIRMED

Emily Danies

Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Laura J. Huff

Tucson
Attorneys for Appellee
Arizona Department of Economic Security

Pima County Office of Children's Counsel
By Nicholas Knauer

Tucson
Attorneys for Appellees
Ruth C. and Solomon C.

ECKERSTROM, Presiding Judge.

¶1 Dorithy C. appeals from the juvenile court’s ruling terminating her parental rights to her sons, Vorjolo C., born in December 2000; and Solomon C., born in March 2005; and her daughter Ruth C., born in June 2008. She argues there was insufficient evidence to terminate her parental rights on grounds of neglect, *see* A.R.S. § 8-533(B)(2), or failure to remedy the circumstances that had caused the children to remain in court-ordered, out-of-home care for more than fifteen months. *See* § 8-533(B)(8)(c). She also maintains the evidence was insufficient for the court to find termination of her parental rights was in the children’s best interests.

¶2 A juvenile court may terminate a parent’s rights if it finds clear and convincing evidence of one of the statutory grounds for severance and a preponderance of evidence that termination of the parent’s rights is in the children’s best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). “[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court’s decision, and we will affirm a termination order that is supported by reasonable evidence.” *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶3 In a lengthy under-advisement ruling issued after a nine-day, contested termination hearing, the juvenile court provided a detailed history of this proceeding.

After fleeing her home in Liberia, Dorothy had lived in refugee camps in different countries before she and her sons, Vorjolo and Solomon, immigrated to the United States in February 2006. Child Protective Services (CPS) had been providing in-home services to Dorothy since June of that year and had received reports that Dorothy had allowed Vorjolo and Solomon to wander alone outside the apartment, had struck and threatened an unrelated child living in her home, and, “on numerous occasions,” had little or no food to feed the children.

¶4 CPS took temporary custody of Vorjolo and Solomon on June 2, 2008, after Tucson police officers responded to a report that Solomon, then three years old, had been left alone at a convenience store. Upon taking him home, they discovered there was little food in Dorothy’s apartment. Dorothy gave birth to Ruth ten days later, and CPS took temporary custody of the infant on June 14, after Dorothy admitted she “did not have a crib, diapers, bottles or anything else needed to care for the baby” and no food in the home other than rice and chicken. The court found all three children dependent as to Dorothy after a contested hearing in December 2008.

¶5 As detailed in the juvenile court’s termination order, CPS and the Arizona Department of Economic Security (ADES) provided the family with “numerous services in support of the plan of reunification,” including

intensive therapeutic in-home services; parenting classes; supervised visitation; housing subsidy; translation and interpretation; food boxes, shoe vouchers, [A]DES daycare, transportation assistance, assistance paying utility bills; budgeting instruction; attendance at monthly Child and Family Team meetings; case management; referrals to outside

agencies for numerous behavioral health services including psychological testing; and DNA¹] testing.

The court noted “a concern throughout the case of [Dorithy’s] lack of interaction and stimulation of the minors during her visits,” and a social worker’s report, after a bonding and attachment assessment, that “there was a lack of trust . . . between the mother and her children.” Although Dorithy had complied with case plan tasks, the court was concerned that she did not appear to be benefitting from those services and changed the case plan goal, first to a concurrent plan of reunification or severance and adoption in May 2009, and then to a plan of severance and adoption in September 2009.

¶6 After ADES filed a motion to terminate Dorithy’s parental rights, she moved the juvenile court to reinstate the concurrent case plan, citing the report of a linguist who had found her English language skills to be equivalent to those of a three-year, eight-month-old child. As stated in the court’s termination order, ADES subsequently withdrew its motion to terminate and amended Dorithy’s case plan “to reflect a more frequent use of interpreters and to require [her] attendance at [an] English-as-a-second language program.” In November 2010, the court found Dorithy was “in compliance with some services but ha[d] not shown sufficient benefit from the services to approve a continued case plan goal of family reunification.” ADES’s pending motion for termination alleged grounds of abuse and neglect, under § 8-533(B)(2), and time in care, pursuant to § 8-533(B)(8)(c).

¹Deoxyribonucleic acid

¶7 A contested hearing on ADES’s motion to terminate Dorothy’s parental rights began in January 2011 and was concluded in April. After making detailed findings of fact, the juvenile court concluded ADES had proven both grounds for termination and also had established termination was in the children’s best interests. With respect to § 8-533(B)(2), the court stated, “Dorothy C[.] neglected the children by her inability to provide the children with food, shelter and supervision such that there was a continuing unreasonable risk of harm to their health and welfare.” As to § 8-533(B)(8)(c), the time-in-care ground alleged, the court wrote,

The children have been in an out-of-home placement for a cumulative total period of 15 months or longer pursuant to court order and CPS has made extra-ordinary efforts to provide appropriate reunification services including extensive translation services, intensive therapeutic in-home services, parenting classes, housing subsidy, DES daycare, transportation, assistance with housing and utility bills, budgeting, referrals to outside agencies, case management and CFT’s. [Dorothy] has [not] benefited sufficiently from the extensive services offered. [She has] substantially neglected to remedy the circumstances that caused the children to be in the out-of-home placement and there is a substantial likelihood that [she] will [not] be capable of exercising proper and effective parental care and control in the near future.

Addressing evidence that the children’s best interests would be served by termination, the court noted, “They have all been in out-of-home placements for more than 15 months and are entitled to permanency. The foster placements wish to adopt the children. If not adopted by these placements, the children are adoptable”

¶8 On appeal, Dorothy first argues the juvenile court “erred in finding clear and convincing evidence for severance” of her parental rights pursuant to § 8-533(B)(2) and

(8)(c). She maintains she “complied with most everything [CPS] required of her” and, quoting *In re Maricopa County Juvenile Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994), argues that “parents who make appreciable, good faith efforts to comply with remedial programs outlined by ADES will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement, even if they cannot completely overcome their difficulties.”

¶9 But in *Maricopa County No. JS-501568*, the court considered whether a mother’s rights could be terminated under a previous version of § 8-533(B)(8)(a), which permitted termination when a parent had ““substantially neglected or wilfully refused”” to remedy the circumstances that caused her child to remain in a court-ordered, out-of-home placement for nine months or longer.² See *Maricopa County No. JS-501568*, 177 Ariz. at 575-76, 869 P.2d at 1228-29, quoting 1988 Ariz. Sess. Laws, ch. 50, § 1 (former A.R.S. § 8-533(B)(6)(a)); see also § 8-533(B)(8)(a). As the court explained in that case, § 8-533(B)(8) provides for termination of parental rights “based on [a parent] *either* substantially neglecting to remedy” the circumstances causing a child’s out-of-home placement for nine months, *or* “ultimately failing to remedy” those circumstances, and likely being unable to remedy them in the near future, after such placement has continued for fifteen months or longer. *Maricopa County No. JS-501568*, 177 Ariz. at 577, 869 P.2d at 1230 (emphasis in original); see § 8-533(B)(8)(a),(c). Thus, in contrast to the

²The version in effect at the time *Maricopa County No. JS-501568* was decided provided for a minimum placement period of one year rather than nine months. See 1988 Ariz. Sess. Laws, ch. 50, § 1 (former A.R.S. § 8-533(B)(6)(a)).

“expedited termination” after nine months of out-of-home care authorized by § 8-533(B)(8)(a), which “focuses on the level of the parent’s effort . . . rather than the parent’s success,” *Marina P. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 326, ¶ 20, 152 P.3d 1209, 1212 (App. 2007), § 8-533(B)(8)(c) focuses on a parent’s success, or near success, in becoming an effective parent during the fifteen or more months her child has remained in out-of-home care.

¶10 Here, the juvenile court recognized Dorothy’s “participat[ion] in services, many of which were re-offered and supplemented with interpretation and cultural support.” But the court found that, despite her participation in the extensive services offered, Dorothy had “demonstrated little change in [her] behaviors and parenting skills throughout the course of the case.”³

¶11 Next, although Dorothy “believes she has progressed to a great degree and . . . is capable of exercising proper and effective parental control,” and argues she has “learned new ways of dealing with the children,” reasonable evidence suggested a contrary conclusion. In support of her argument, Dorothy cites her own testimony, the testimony of a family support specialist who observed “four or five” visitations in late 2009 and early 2010, and the testimony of the most recent visit supervisor assigned to the family. But although the visit supervisor testified Dorothy had shown progress in her

³Notwithstanding the juvenile court’s suggestion that Dorothy had “substantially neglected” to remedy the circumstances that rendered her unable to parent her children, a term ordinarily associated with termination pursuant to § 8-533(B)(8)(a), all other findings and conclusions in the termination order make clear the court determined termination was warranted pursuant to § 8-533(B)(8)(c), as alleged in ADES’s motion and as expressly stated in the order.

parenting skills between October and December 2010, she also had reported a regression of those skills during visits held in November and December 2010, as well as in January and March 2011. And Dorithy fails to address the reports of CPS case managers and other service providers who either had worked with the family as recently as the fall of 2010 or were still working with the family. According to those witnesses, Dorithy's parenting skills had not improved, and she had appeared for visits unprepared for the children's needs, had been unresponsive to them, and had been observed failing to provide adequate supervision to Ruth immediately after visits, allowing the toddler to wander unassisted in the parking lot. Essentially, Dorithy asks us to reweigh the evidence on appeal, and we decline to do so. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶¶ 4, 14, 100 P.3d 943, 945, 947 (App. 2004) (juvenile court "in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts").

¶12 Similarly, Dorithy argues, without citation to the record, that "severance and adoption . . . is not in the best interest of the children" because the boys and Ruth will be placed in different homes without "mandated" visits between the siblings, because the children miss their mother, and because "[t]he boys are not in a home where they will be adopted." But there was evidence before the court that all of the children were adoptable and were currently placed in prospective adoptive homes that were meeting their needs and were committed to maintaining contact between the siblings. Sufficient evidence thus supported the juvenile court's best interests finding. *See Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998) (benefit of severance

may be shown by immediate availability of adoptive placement or current placement meeting child's needs); *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994) (evidence that child adoptable supports best interests finding).

¶13 We need not repeat the juvenile court's well-reasoned analysis here. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The record fully supports the juvenile court's findings of fact, which in turn support its conclusions of law. Accordingly, we affirm the order terminating Dorothy's parental rights. *See id.*

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge